

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 27 of 1991

with

CRIMINAL APPEAL No 32 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and
MR.JUSTICE H.L.GOKHALE

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

...1 & 2 yes & 3 to 5 No...

RANVIRSINH SARDARSINH JAT CHAUDHARY

Versus

STATE OF GUJ

Appearance:

1. Criminal Appeal No. 27 of 1991
MR SV RAJU for the appellants
Mr.Y.F.Mehta, Ld.Addl.PP for Respondent No. 1
2. Criminal AppealNo 32 of 1991
MR NITIN M AMIN for the appellants
Mr.Y.F.Mehta,Ld.Addl.PP for Respondent No. 1

CORAM : MR.JUSTICE N.J.PANDYA and

Date of decision: 30/01/97

ORAL JUDGEMENT (Per N.J.Pandya,J.)

On 1-7-1989, on the outskirts of City of Palanpur, under instructions of DSP, PSI Pandey, along with his police party, was keeping a watch on the highway. As a part of this, they were stopping the vehicles and were also searching the vehicles so stopped. One such vehicle, G.R.S.6407, coming on that highway from outside State of Gujarat, was halted and search was carried out. It was an empty tanker. From the first hold of the vehicle, suspicious packet was found, which on being taken out, was found to contain Narcotic, which ultimately turned out to be opium weighing 5.50 kgs. valued at that time at Rs.27,500/-. search on three occupants of the tanker i.e. accused no.1, the owner, accused no.2, the driver, and accused no.3, the conductor was carried out on the spot and only currency notes from each of them was recovered, as set out in charge Exh.4, page 11.

2. This led to trial before the learned Sessions Judge, Banaskantha at Palanpur in Sessions Case No.1 of 1990 leading to their conviction under Sec.17 of NDPS Act, where the learned Judge was pleased to award R.I. for 10 years and fine of Rs.1,00,000/- and in default to undergo R.I. for 2 years. This judgment is dated 4-12-1990.

3. Initially attempt was made on behalf of appellants-accused by the learned Advocates appearing for them, to the effect that the seal affixed on muddamal articles is found to be defective or not the same as was noticed by the FSL people when they received the muddamal article for analysis purpose. However, this point could not be carried any further because what was sought to be argued was on the basis of jumbling of some words used either in the beginning or at the end of the concerned seal. The seal affixed being a round one, the order of the words used therein would depend upon the location or the point from which, in that round seal, one would start reading the writing inscribed therein.

4. The second point urged was that PSI Pandey, who got halted the vehicle and finally seized the material had not informed his superior office within 48 hours. Strictly speaking, this submission is made in respect of another PSI Mr.D.C.Kadhiyan, p.w.9, who was pointedly asked this question in the cross examination and has claimed that he had oral discussion about the same with

his superior Officer i.e. DSP. He had an occasion to discuss this when he met the said Officer after obtaining order for remand into police custody for 11 days in respect of the accused. He had to meet the said superior Officer as he was to leave the District.

5. In our opinion, this point also will not help the accused-appellants because, infact, the person who found the offending article and therefore, became complainant and also carried out search and seizure both is PSI Pandey, p.w.2 and he, without any loss of time, has immediately reported the fact to his immediate superior Police Officer i.e. P.I. of City Police Station at Palanpur as per exh.19. Requirement of Sec.57 is therefore, fulfilled.

6. Now remains the question of applicability of Sec.50. The search, which has been carried out, is that of the vehicle i.e. tanker which, at the end of the trial, the learned trial Judge has been pleased to confiscate to the State. It belongs to original accused no.1, who is the appellant of appeal No.32 of 1991.

7. The Section is very clear. It refers to a person. It can arguably be said that, if anything is being carried by a person and if offending article is found from the things so carried, recovery can be said to be the result of a search of the person of the accused, who was carrying the article in his hand. The situation is otherway round here. All the three accused were being acarried in the tanker because the seized tanker belonging to accused no.1 was being driven by accused no.2, who was returning from Gaziabad where he had delivered ground-nut oil as per Exh.40.

8. Assuming that Sec.50 is attracted in view of the Supreme Court judgment in H.P. vs. Pirthichand reported in 1996(2) SCC 37 para 8, where the rigour of Balbirsingh's case (reported in AIR 1994 SC 1872) has been considerably reduced, if there is other material on record to support the prosecution case, conclusion of conviction can be arrived at and automatically therefore, it can be sustained in appeal. That exactly is the position here.

9. The very first witness examined before the trial Court is the panchwitness p.w.1 Sakirmiya A. qureshi, exh.12, who has supported the case of the prosecution fully and the panchnama prepared, in his presence, as also in presence of other panch, has been produced and proved at exh.17. The defence of the accused

is that of total denial. They have even disowned the fact of article being found from the tanker.

10. The article was not lying just hanging outside visible to anyone and everyone. The hold of the tank are in all 3, referred to as three different compartments. The first one of it was searched and looked into for which purpose, the aperture on the top was bent which is of the diameter of 3" to 4". Opening the entry into the hold, a spanner had to be used and about 12 bolt had to be unwound and unscrewed, then only one could enter. What was suspected on preliminary examination from the small aperture was thereafter recovered in this manner after the lid was removed with the help of spanner and bundle was taken out. Under the circumstances, the case of denial putforth would not stand as the bundle could not have been put in the said first compartment of the tanker without some physical act involved in it for which the three accused have been charged jointly and have been held guilty.

11. A passing reference may be made to a so-called discrepancy about the plastic bag referred to in the FSL report which in case of panchnama, is referred to as a treated paper, which may be a paper, which is equated with water proof material or wax, which is referred to as "minia kagal"(in Gujarati). Wax paper incidentally is known as marble paper, as said by Mr.Y.F.Mehta, the LAPP. This discrepancy, in our opinion, does not help the accused-appellants at all because there is complete chain of evidence. P.S.I. Pandey, Police Officer of Palanpur, panchwitnesses all have been examined and the panchwitness also has supported the prosecution case fully. The muddamal sent to FSL was found in tact. The entire period of 21 days from seizure of the muddamal to the date of delivery has been explained and no discrepancy in this regard has been found.

12. The net result, therefore, in our opinion, is that the appeals fail and the order of the trial Court is confirmed. The appeals are dismissed.
